BAIL SLIP

CA No's 989/99 1010/99 and 1045/99

The accused namely Venkatachalam (A2) A.P. Thangavelu (A1) and S.Ramasamy (A3) respectively were directed to be released on bail in and by the orders of this Court 1) dated 6.12.99 in Crl.M.P.10457/99 2) dated 16.12.99 in Crl.M.P.10690/99 and 3) dated 23.12.99 in Crl.M.P.No.10943/99 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.989, 1010 & 1045 of 1999

1.Venkatachalam .. Appellant in Crl.A.No.989/99/
Accused No.2

2.A.P.Thangavelu .. Appellant in Crl.A.No.1010/99/
Accused No.1

3.S.Ramaswamy .. Appellant in Crl.A.No.1045/99/
Accused No.3

vs.

State rep by
The Inspector of Police,
Vigilence and Anti Corruption,
Salem. .. Respondent in above three appeals
(Cr.No.1/AC/82)

Prayer: These appeal have been preferred against the judgment dated 18.11.1999, made in S.C.C.No.206 of 1986 on the file of the Special Judge and First Additional District Judge-cum-Chief Judicial Magistrate, Salem.

For Appellant : Mr.A.K.Kumarasamy (in Crl.A.No.989/99)
Mr.A.N.Thambidurai (in Cr.A.No.1010/99)

Mr.V.Gopinath, Senior Counsel,
for D.Shivakumaran (in Crl.A.No.1045/99)

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For Respondent : Mr. V.R.Balasubramanian, APP,
(in above three appeals)

COMMON JUDGMENT

The short facts of the prosecution case relevant for deciding these appeals are as follows:-

There were originally 5 accused in S.C.C.No.206 of 1986. The charge against A1-Abdul Raheem was quashed by this Court as per its order in Crl.M.P.No.12604/86 dated 7.12.1990. A5-Veeraraghavan expired, hence charge abated against him. The remaining A2, A3, A4 were arrayed as A1, A2 & A3. A1-Thangavelu is a public servant as Public Works Supervisor in Mettur Township Committee, Mettur, between 8.10.1979 to 31.8.1980. A2-Venkatachalam is a bus conductor turned contractor. A3-Ramasamy is the store keeper of the Mettur Township Committee during the relevant point of time. According to the prosecution, between 8.10.1979 to 31.8.1980, A1 to A3 have conspired together in purchasing alum, (படிகாரம்) for cleaning drinking water supply to the public by the Mettur Township. A1 has called for tender for the supply of 15 tones of alum to the Mettur Township Committee through A2, who had supplied only 8 tones of alum instead of 15 tones. But A1 and A3 have made false entries in the records maintained by the Mettur Township Committee. Co-accused P.W.20-Santhanam, who was the electrician of the Mettur Township has turned as approver in this case. Hence, the accused have been charged under Section 477(A), 120(B) & 420 IPC and under Section 5 (2) & 5(1)(d) of Prevention of Corruption Act r/w 109 IPC.

2. The case was taken on file by the Special Judge and First additional District Judge-cum-Chief Judicial Magistrate, Selam and on appearance of the accused on summons, copies under Section 207 of Cr.P.C., were furnished to the accused and when charges were framed and questioned the accused pleaded not guilty.

3. Before the trial Court P.W.1 to P.W.27 were examined and Ex.P.1 to Ex.P.122 were marked.

4. P.W.1 is the complainant in this case. He is a social worker. He was in DMK political party previously and subsequently in the year 1980 he was in ADMK political party. According to him, he knows both A1 and A2. A1 was working as a Junior Engineer and A2 was working as a conductor in MKS but service. On 3.8.1980 at about 11.15 am he saw both A1 and A2 standing infront of the Indian bank near SLK lodge, Mettur, and shouting at each other and

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since both A1 and A2 were known to him, P.W.1 intervened and pacified both of them. After A1 left with P.W.6.Pandurangan, he enquired A2 with a curiosity to know the cause for their fight. At that time he came to know that A2 was not working as conductor but was doing contract business in the name of Venkateswara Enterprises and that on 1.7.1980 on the basis of the tender received from Mettur Township for the supy of 15 tones of alum at the rate of Rs.1,950/- per tone and on an order to that effect was passed by then Administrative Officer of the township viz. Abdul Rahim (discharged accused) and in this regard when he met A1, Junior Engineer, and discussed with Abdul Rahim (deceased) and Abdul Rahim instructed him to tell only 8 tones of alum and not to deliver 15 tones as per the tender agreement and the value of remaining 7 tones alum shall be shared between A1 and deceased accused Abdul Rahim and the value of the balance of two tones shall be given to A2-Venkatachalam towards his share and in pursuance of the said agreement on 27.7.1980 A1 & A2 went to Madras in a bus and stayed in Surath lode at Govindapanayakan Street, Chennai and both A1 & A2 approached M/s.M.M.Kicha and Co., in the same street and requested to supply 8 tones of aloum at the rate of Rs.128/- per bag of 100 Kg 80 bags, but they should give bill at the rate of Rs.150 per bag and took delivery of 80 bags of alum after paying Rs.10,240/- as per bill NO.897 at the rate of Rs.150/- per bag and out of the sale proceeds A1 had taken Rs.1,600 towards his share from M/S.M.M.Kicha and C., and left for Mettur and on 28.7.1980 A2 had loaded 80 bags of alum in a lorry belonging to M.K.S. Service for transporting the same to Mettur and charged Rs.720/- as per the receipt No.044525 and reached Mettur on 29.7.1980 at about 12.00 noon and has also informed A1 that 15 tones of alum were transported to Mettur and 80 backs containing the alum were stored in the godown at Mettur and a cheque for Rs.31,707/- was issued by Abdul Rahim Administrative Officer of the Mettur Township on 2.8.1980 at 10.30 am in favour of A2. After receiving the cheque when A2 proceeded to Indian Bank in order to deposit the same in his account and A1 also followed him and quarrel with him. In this regard P.W.1 has obtained a statement from A2 and forwarded the same to the then Chief Minister on 20.8.1980 through MLA Mr.K.P.Nachimuthu along with his letter Ex.P.2. Ex.P.1 is the complaint preferred by P.W.1. According to P.W.1 along with Ex.P.1-complaint he has forwarded the statement of A2 to the Chief Minister.

5. P.W.2 is the then cashier of Indian Bank, Govindapannayakan Branch, during 1980 to 1982. According to hi, on 28.7.1980 Aw came to their bank in order to take demand draft in the name of M/s.M.M.Kicha & Co, Chennai, for a sum of Rs.12,000/-. Ex.P.3 is the application for the issuance of demand draft. According to him, M/s.M.M.Kicha and Co., was also having an account in their bank. On 28.7.1980 under Ex.P.4-cheque a some

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of Rs.1,360/- was dispersed in favour of A2.

6. P.W.3 is the owner of Sampath and Co., dealing in hardware business. According to him, the Investigation Officer in this case had examined him by showing Ex.P.5 to Ex.P.7, but he would inform the Investigation Officer that Ex.P.5 to Ex.P.7 were not signed by him and the signature in those documents do not belong to him.

7. P.W.4 is a partner in M.K.S & Brothers Transport Company and the lorry bearing Registration NO. MRL 3686 belongs to his company and that A2 was working as a conductor in their company in the year 1980 and subsequently he had resigned his job and in the month of July 1980 A1 approached him for transporting 80 bags of alum from chennai to Mettur in his lorry and accordingly he also hired his lorry bearing registration No.3686 to A2 and hired charge were paid by him. Ex.P.8 is the GC note (Goods Consignment Note) and that the lorry hired charge of Rs.720/- was paid at Chennai by A2.

8. P.W.5 is an Assistant Administrative Engineer in the Tamilnadu Water and Drainage Board from 4.1.1977 to 5.7.1980. Ex.P.9 is the file relating to Mettur Township file No.10454/e2/79 and through the said file on 15.8.1980 steps were taken to procure 15 tones of alum for Mettur Township through tender. Only on the recommendation of A1-Thangavelu and P.W.20-Santhanam (electrician of the township) tenders were called for through publication in a vernacular daily on 18.10.1979. Since there was not response, once again on 23.11.1979 again an similar publication was made calling for tenders in the same vernacular daily and that he has made an endorsement at page 19 in the file Ex.P.9 that a similar publication can be made in the Hindu Daily and on 29.1.1980 four price list were called for and since no one has comeforward to make deposit, the above said four price list were cancelled. For the forth time as per the entries at page 62 in Ex.P.9 tender was called for through Tamil Daily dated 31.3.1980 and on 31.3.1980 the concerned assistant in the section gave two price list one belongs to Postal Chemical Limited and another belongs to Venkateswara Enterprises and he (P.w.5) has initialed in both price list and gave to the section. The price list furnished by Venkateswara Enterprises was not available in the file but the price list filed by the Postal Chemical Limited alone was available and the price list in which he has initialed is not available in the file, but the price list furnished by Venkateswara Enterprises without his signature is available at page 89 of Ex.P.9 and that he was examined by the Vigilance and Ante Corruption Inspector in connection with Ex.P.9.

9. P./w.6 is he former Works Inspector of Mettur township

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Committee and at that time A1-Thangavelu was working as a Junior Engineer of Mettur Township under whom he (P.w.6) was working. He also know A2-Vengadachalam as a conductor of M.K.S. Bus and he had seen A2 frequently visiting A1 and both A1 & A2 were in cordial terms. On 2.8.1980 at about 11.30 am he went to Indian Bank along with A1 and at that time he asked him (P.W.6) to verify whether A2 had encashed the cheque and accordingly he verified with A2 whether he had encashed the cheque but A1 had replied in the negative and accordingly he had passed on the said information to A1, which resulted in a scuffle between A1 & A2. Immediately he returned to his office.

10. P.W.7 is a cleaner in the Mettur Township Water Scheme Cleaning office, wherein A1 was working has a JE and A2 was working as a conductor in MKS Bus. A3 & A4 were also working in the Mettur Township as a clerk and electrician respectively. One Marappan was also working along with him (P.W.7) as a cleaner in the same office. One day in July 1980 at about 12.00 noon in the said cleaning office he, the said Marappan and A4 were present there came a telephone call, which was responded by A4 to whom A2 had passed on a massage that he had brought one load full of alum and he same to be unloaded at the godown. A2 came to the office and enquired about P.W.20-Santhanam (approver) and thereafter A2 had passed on the above said information to A4. Thereupon P.W.2-Santhanam brought to key for the godown and he (P.w.7) was also standing by the side of him. 80 bags of alum were unloaded from the lorry at the godown. A2 has informed that another load will be arriving soon. But no other load arrived as told by A2. P.W.7 would depose that they use to dissolve alum in the water let out from the Mettur dam in order to purify the said water and every day about 50 to 60 kgs of alum will be dissolved for the said purpose in the water and that he along with Marappan used to dissolve the said alum in the water for the purpose of cleaning the water. Ex.P.10 is the register maintained for the purpose of recording the quantity of alum received and expended. In Ex.P.10 at page 76 the details of expense of alum is being stated. Ex.P.11 is page 77 in Ex.P.10. Even though there is an entry at page 76 to the effect that during the month of August daily 250 kgs of alum was stated to be dissolved in the water but that is not the correct statement. He would categorically state that usually if alum bags were received they will be unloaded and stored only in godown at the office but this time the load was unloaded at the godown at water purifying station.

11. P.W.8 was the Manager of Indian Bank, Mettur dam branch during 1981 to 1985. Ex.P.12 is the letter handed over by him to the Investigation Officer in this case. From the records he could find that the cheque bearing No.861112 dated 2.8.1980 was drawn in favour of Thiru Venkateswara Enterprises by Mettur Township for a

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sum of Rs.31,707/- and that the said amount was entered to the credit of the Venkateswara Enterprises. The cheque bearing No.004977 dated 4.8.1980 for Rs.31,000/- was drawn by Venkateswara Enterprises in favour of one Dharmalingam.

12. P.w.9 is the resident of Mettur. He is running a tea stall as well as indulging in contract work. During 1980 he had taken contract in the Mettur Township and that the knows A2-Vengadachalam, who used to visit his office very often and he (A2) was the person who was supplying necessary articles to Mettur Township. During 1980 A2 gave a cheque and requested him to encash the same in Indian bank. The said cheque was for Rs.30,000/-. Accordingly he encashed the cheque and handed over Rs.30,000/- to A2. Since A2 & A1 were at logger heads, A2 had asked him (P.w.9) to encash the said cheque.

13. P.W.10 is the Deputy Commissioner of Commercial tax office at Chennai. During 1983 he was working as an Assistant Commercial tax officer, Salem and on 16.11.1983 as per the request made by the Inspector of Police, Vigilance and Ante Corruption, he went to the office of the Vigilance and Ante Corruption, Salem, wherein the specimen signatures of the accused Thangavellur was obtained in three papers in his as well as in the presence of Thiru Santhasivam, a junior engineer of Tamilnadu Electricity Board. The above said 3 specimen signatures are Ex.P.13 (series). The specimen signatures obtained in 3 separate sheets are Ex.P.14 (series). At that time of collecting the sample signatures from A1 he was working at Thiruvannamalai.

14. P.w.11 is the Deputy Commercial Tax Officer, Dharmapuri. During 1980, he was working as Check Post officer at check post Iyothiyapattinam and along with him four other persons were working. On 29.7.1980 he was on duty from 8.00 am to 8.00 pm. Ex.P.15 is the check post memo register. As per the entry in Ex.P.15 for the date 29.7.1980 at Sl.No.100 at page 29 the lorry bearing No. MRL 3686 had crossed the check post at 8.07 am. The said lorry was proceeding to Mettur from Chennai and it was driven by driver Arumugam. Ex.P.16 is the relevant entry at page 29 in Ex.P.15. He had collected the bill sent along with the lorry to Deputy Commercial Tax Office, Omalur.

15. P.W.12 was conducting an enterprises by Jaichanran Enterprises, at Mettur during 1978 to 1986, which was dealing with sulphuric Acid. He was examined by the Investigation Officer in this case. The Investigation Officer had shown Ex.P.17 invoice 33A dated 26.7.1980 issued by Jaichandran Enterprises, wherein it has been stated that 7 tones of alum was said to be sold. He would depose that Ex.P.7 does not belong to his firm and that his firm is not indulged in the sale of alum but they are concerned

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with the sale of sulfuric acid only. He would admit that Ex.P.18 dated 13.9.1985 and Ex.P.19 dated 25.9.1985 were given by him, but does not remember to whom he has handed over Ex.P.18 & 19, but he immediately would say that he gave them to Venkateswara Enterprises.

16. P.W.13 is the lab chemist of Chemical & Industrial Corporation during 1963 at Mettur and that there is a water treatment plant at Mettur and the water will be treated in their laboratory. If the water was found impure then he will give report to that effect. To clean one liter of water 10 to 24 mg of alum will be dissolved in the water. For an ordinary water 30 mg of alum will be mixed in one liter water for the purpose of cleaning the same.

17. P.w.14 was the cleaner, who was working under Santhanam (P.w.20) at Mettur Township Water Works. On 27.9.1980 he was working in night shift and he came to the office at 9.00 pm and left the office at 6.00 am on the following day. He saw about 80 bags of alum in the godown at Water Works. He was informed that those 80 bags were unloaded and kept their in the godown by Santhanam-P.W.20. He would depose that usually the alum bags will be unloaded and kept only in the store room but this time 80 bags were kept in the godown of water works. He would categorically say that during the remaining period of the yer apart from those 80 bags of alum no other bags containing alum was delivered and that during July and August depending on the intencity of the impurity of the water daily 50 to 80 kg of alum will the dissolved in the water by him. He would in definite terms say that he had not dissolved exceeding 80 kgs of alum per day preceding two months and that at no point of time he had dissolved neither 200 nor 240 kgs of alum in the water.

18. P.W.15 was the clerk of Mettur Township during 1980. He would say that A1-Thangavelu was working as junior engineer and at that time A3 was working as junior assistant in Mettur Township during 1980 and that the Investigation Officer had enquired him by showing Ex.P.20 relating to the file 5873/e2/80 and in it at page 135 dispatch seal has been affixed but it does not contain his signature. Ex.P.21 is page 135 in Ex.P.20. Likewise in page 143, 149, 155 also dispatch seal was found but it does not contain his initials. Page 143 is Ex.P.22, page 149 is Ex.P.23 and page 155 is Ex.P.24. According to him, Ex.P.21 to Ex.P.24 entries were made by A3-Ramasamy. Ex.P.25 is the maffesal tabal dispatch register. He would say that he joined duty on 15.7.1980 but on the said ate Ex.P.21 to Ex.P.24 were not dispatched.

19. P.W.16 has not supported the case of the prosecution. Hence he was treated as hostile witness.

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20. P.W.17 was the Filter Bed Operator of water purifying station at Nangavalli durin 1965 to 1987. He would said that daily from salem about 55 lakhs galan water was distributed and there are six filter bed in the said station. Basing on the percentage of turbidity of the water maximum 150 kgs of alum per day will be dissolved during July and August of 1980. According to hi, Nangavalli Water Purifying Station is six times bigger than that of the purifying station at Mettur. To ascertain the turbidity of the water, they use to conduct test by using turbidity silver rod PW 35 and then proportionately dissolve the alum in the water to purify the same. If more alum was dissolved in ordinary water where this is no much turbidity then the water became useless for drinking purpose.

21. P.W.18 is the then VAO of Azhagapuram village. On 19.3.1983 he went to Vigilance and Ante Corruption Department, as per the request made by the Inspector of Police. At the time when he reaches the said office A2 was found available there. Ex.P.26 (series) are the specimen signatures of A2 which were obtained in his as well as one Sathasivam's presence. The specimen signatures of A2 were also obtained in 3 separate sheets.

22. P.W.19 is the then junior assistant in Deputy Commercial Tax office at Omalur. During 1980 to 1984 he was working as a Personal Assistant to the Deputy Commercial Officer at Omalur. As on 25.4.19980 Sri Venkateswara Enterprises was issued with a licence for selling aluminiam sulphate and electrical appliances as per the registered certificate No.788734. Ex.P.28 is the connected file. The said licence was received by A2 on 29.4.1980. A2 is the proprietor of Sri Venkateswara Enterprises and he has obtained licence for selling his goods at Mettur dam. The said licence was renewed upto 31.3.1982.

23. P.W.20 is the electrician of Mettur Township water purifying and drinking water pumping station for the past 20 years and he had retired from service on 13.6.1986. He knows all the accused. His duty was to clean the filter daily, dissolving the alum in the water and to note down the storage of the water and to enter the quantity of alum spent every day in the account register. According to hi, he was doing the said job along with A4-Veeraragavan (deceased) and that there were two shifts one from 7.00 am to 3.00 pm and another one from 7.00 pm to 3.00 am and that he as well as Veeraragavan (deceased) were doing the said work in turns. During 1979 to 1980 A1-Thangavellu was the inchargge of the post of supervisor and as per his instructions the indane for alum was placed by him (P.W.20). A3-Ramasamy was the store keeper. A2 was working as a bus conductor. On 13.8.1979 10 tones of alum was kept in stock and under Ex.P.29 he had given

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a certificate to the effect that there is need for further requirement of alum as instructed by A1-Thangavellu (Ex.P.29 is in Ex.P.9 file). But no further quantity of alum was supplied. On 20.6.1980 apprehending more quantity of water will arive at Kavery river and there may be more requirement for alum, he had written Ex.P.30-letter stating that 15 tones of alum are required more as instructed by A1-Thangavellu. But no further supply of alum was received. Hence, again on 11.7.19980 as per the instructions of A1-Thangavellu he wrote another statement under Ex.P.31 stating that more quantity of alum was required (Ex.P.31 is in Ex.P.20 file). During the end of the month of July he was in his house at 12.00 noon a person informed him that he was required by the supervisor, immediately he went to the office and met the supervisor A1-Thangavellu, who had informed him that alum has arrived and requested him to unload the bags of alum at water works godown. When h (P.W.20) asked him why he directs him to unload the alum at the godown of the water works contrary to the normal procedure of unloading the alums at the office godown. For that, A1-Thangavellu had adviced him to do the work without raising unnecessary questions. So immediately he went the godown at water works where he saw the A4-Veeraragavan at day duty and also saw the MKS lorry and A2-Venkatachallam who came in the said lorry. A2-Venkatachalam had informed him hat he is supplying the alum to the township and he had brought 80 bags of alum in the said lorry and with the help of the other employees he unloaded 80 bags of alum at the water works godown in the presence of P.W.7-Thomas and one Marrappan. A2 has informed that another load of alum will arrive very soon but the second load never arrived. Immediately he came to the office and informed A3-Ramasamy that 80 bags of alum were stored in the godown. Thereafter he went to his house and took his lunch and returned to office at about 3.00 pm and informed A1 about the arrival of 80 bags of alum which is equivalent to 8 tones. A1 chided why he has informed about the arrival of alum to A3-Ramasamy thereby exceeding his limit. Thereupon he had obtained an indane for the daily use of the alum. A1 had inforemd him to maintain the account in a way to show that a larger requirement of alum for every day use. Every day 60 to 70 kgs of alum is required for use. As per the instructions of A1 he had return the accounts as to the daily requirement as 250 kgs to 300 kgs. He has also informed Veeraragavan who is doing the 2nd shift to follow the same method and he also did so. He has also informed this to Abdul Rahim, the then VAO of the Mettur Township, who has also advised him to act as per the instructions of the supervisor, accordingly out of fear he maintained the accounts as directed by A1 and deceased accused Veeraragavan also did so. Ex.P.10 is the register showing the daily requirement of alum and as per the instructions of the supervisor he and deceased accused Veeraragavan had entered the account for July and August 1980 as 240 kgs was spent every day. Ex.P.11 is the said entry in the

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handwriting of Veeraragavan and his (P.W.20). He would categorically say that only 8 tones of alum was received and remaining 7 tones of alum was never received. Only to set right this deficit A1 had asked him to write false account has indicated above. During July and August months three indanes were placed only to set right this deficit. At page 75 and 76 in Ex.P.10 the above said details of indane is shown. Ex.P.32 is the log book for the period from 7.6.1980 to 11.9.1980. Those entries at pages 67 to 159 were entered by him and Veeraragavan. He would say that instead of entering that 62 to 80 Kgs of alums were spent per day it has been wrongly entered as 150 to 240 kgs of alums were spent per day by them. He would also depose that he was also arrested by police and kept in prison and later he was produced in the Salem Court and he gave confession statement before the Magistrate, who had given him 24 hours of reflex time after giving statutory warning. Ex.P.30 is his confession statement and that he was given tender of pardon.

24. P.W.21 was the junior Assistant he maintains records relating to Tender and based on the indane Ex.P.29 the requirement of 15 tones of alum was recommended under Ex.P.34-official proceedings. After calling for tenders, which was successful only at the fourth time, the entire documents along with participants companies records were placed before A1. Since A2's company's tender is less, the tender was given infover of A2 under Ex.P.36. Ex.P.39 insertion was made in S.No.64 instead of hair belt 5, 15 tones of alum was introduced. The said document was prepared by P.W.21, counter signed of P.W.22, the Executive officer.

25. P.W.22-Santhanagopalan, is the manager during the relevant period, who was examined by the Investigation officer by showing Ex.P.9 and Ex.P.20. He would depose that while 9 tones of alum were in stock, tender proceedings were initiated to purchase 15 tones and the tenders were called on 31.10.1979, 06.12.1979 and 29.01.1980 but there was no response. Hence, 4th tender was called in which A2-comapany and another company responded and since the quotation of A2 was lowest, Executive officer has given an order in favour of A2-company and tender shedule ExP.39 was prepared by P.W.21. In the insertion item both P.W.21 and A3 have affixed their signature in Ex.P.39. Under Ex.P.20, Executive Officer issued the order in favour of A2 company in which A3 stated and affixed his signature for the supply of 15 tones of alum. A2-company had no objection to give Rs.31,707/- under Ex.P.42 which was maintained by P.W.20.

26. P.W.23 is the manager in Industrial Chemical Agency who supplied the alum sulphate to the MM.Kitcha & Co., for 8 tonnes the sum of Rs.10,240/- was received under Ex.P.50 to 52.

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27. P.W.24, Booking clerk for MKM lorry office at Thambu Chetty Street who would depose to the effect that 80 bags of alum from MM.Kitcha & Co., was transported from its godown to the godown of Mettur Township water works and transport charge was Rs.720/- and Ex.P.4 and Ex.P.53 are the relevant documents.

28. P.W.25 is the receptionist of Surath Lodge. He would depose that as per the entries in Ex.P.24-register of the lodge, Thangavellu (A1) stayed at their lodge on 28.7.1980 from 5.50 am. The relevant entry in Ex.P.54 is Ex.P.55, wherein at page 36 A2 has signed which is Ex.P.56. Ex.P.57 is the dispatcher register and at page 77 in Ex.P.57, it has been stated that Thangavellu had left the lodge at about 6.45 pm and delivered Room No.6 of the said lodge. Ex.P.58 is the signature of A10Thangavellu in dispatcher register. Ex.P.59 is the cash register which will show that Rs.25/- has been charged from A1-Thangavellu as rent for his stay in Room No.6. The relevant entry in Ex.P.59 is Ex.P.60.

29. P.W.26 Vedachalam would depose that he knows Abdul Rahim and on seeing the tender advertisement in 'Malymurasu' newspaper on 8.7.1980 he approached the said Abdul Rahim and requested to held him to get the tender for the supply of alum. Ex.P.61 is the tender produced by him and as per his tender he has applied to supply sulphur amoniya at the rate of Rs.2,500/- per tone and alum at the rate of Rs.350.50 per tone and the said tender amount was quoted by him at the advise of A1-Thangavellu and when he met him a week thereafter, he was informed that the tender was given to another person.

30. P.W.27 speaks that the he is owning an Clinical Company and he has not participated in the tender and in the year 1980 May 76.580 tones of sulphur amoniya was the stock in his company and the rate of alum per tone during July 1980 was between Rs.1000/- to Rs.1025/- and that he is also having a water purifying plant in which the requirement of alum per day was 60 to 78 kg.

31. P.W.28 is the mahazar witness for the house search conducted by the Investigation officer in A2's house on 16.2.1982 between 12.15 pm to 2.00 pm. Ex.P.62 is the search list in which he has signed as a witness.

32. P.w.29 is the then Assistant of Assistant Engineer's office at PWD at Mettur Dam. He would depose that during July and August 1980 the quantum of water relied was 2000 cubic feet per minute. Ex.P.63 is the statement given by the Assistant Engineer in this regard.

33. P.W.30 is the handwriting expert. He would speak about

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Ex.Ps.64, 65, 66, 54, 57, 62, 67, 3, 4, 68, 69, 27, 26, 69, 71, 72, 13, 14, 73, 74, 75 and he has compared the signatures of A1 and A2 with that of the disputed signatures in the said documents and he has given his opinion Ex.P.76.

34. Ex.P.31 is a retired under secretary to the Government, who after going through the records received from Vigilance and Ante Corruption department has given sanction order for initiating criminal proceedings against A1, A2, A4, A5 & a6 under Ex.P.77.

35. P.W.32 is working in EB Department as Assistant Engineer, who went along with P.w.36 to the house of A2 during house search and only his presence Ex.Ps.62, 52, 53, 78 to 85 were recovered.

36. P.W.33, ACTO, speaks that he send summon to A2 for payment of tax to 15 tones of alum under Ex.P.86 and Ex.Ps.17, 18 & 19 are the letter received from A2.

37. P.W.34 is the J.M.Assistant, who speaks about the recording of approver evidence and proceedings and Ex.Ps.3, 87 to 90.

38. P.W.35 is the judicial officer who had recorded the confession statement of P.W.20 under Section 164 of Cr.P.C., under Ex.P.91 and his proceedings are Ex.Ps.92 to 94.

39. P.W.36 and P.W.7 are the investigation officers who speak about registration of the complaint-Ex.P.1 and about the enquiries. On the basis of the report sent by the Vigilance and Anti Corruption Department, a case was registered under Cr.No.1/82 under Section 129(b), 477(A), 428 IPC and under Section 5(1) r/w 5 (1)(d) of the Prevention of Corruption Act, 1947 and under Section 109 IPC. They have examined the witnesses and recorded their statements and arrested the accused and remanded them to judicial custody and produced P.W.20-Santhanam before the Judicial Magistrate and after getting tender of pardon, he was treated as an approver and after completing the investigation and after following the formalities, P.W.37 has filed the charge sheet against A1 to A5 under Section 120(b), 420 r/w 109 IPC, 477(A) IPC and u/s 5(2) r/w 5(1)(d) of PC act, 1947.

40. When incriminating circumstances were put to the accused A1 to A3 would deny their complicity with the crime.

41. Now the point for determination these appeal is whether the findings of the trial Court against the appellants herein that they are guilty under Section 120(b), 420, 477(A) IPC and under Section 5(2) r/w 5(1)(d) of PC Act, 1947 r/w section 109 IPC, is liable to the set aside for the reasons stated in the memorandum

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of appeal?

42. The Point:-

42(a) The learned Senior Counsel Thiru Gopinath appearing for A3/appellant in C.A.1045/99, would draw the attention of this court to the fact that the findings of the learned trial Judge basing mainly on the sole evidence of P.W.20, the approver cannot be sustainable because P.W.20 was examined only in chief-examination and was not cross examined since he died subsequently to the recording of chif-examination before the trial Court and under such circumstances failure of an opportunity to the accused to separate the truth from the evidence given by the witness in examination-in-cheif, would amount to cutting his hands, legs and mouth and making him to stand meekly before the barrage of statement made by the witnesses in examination in chief against him for sending him to jail. In support of this contention the learned senior counsel would rely on 1995 Cr LJ 1270 (Nandnan Kheamraj Vs. State of MP and another). The facts of the above case is that on the private complaint of the food inspector, in respect of adultration of milk, against the accused, the conviction was based on evidence of the food Inspector, alone, though he was not cross-examined by the accused and his cross examination was not possible due to his accidental death. Under such circumstances, it was held by the High Court of Madhya Pradesh that the conviction could not be based merely on the statement of the food Inspector which was recorded before framing of the charge and particularly when panch witnesses did not support the food Inspector. It cannot be said that the accused having been dead his evidence could be relied upon by invoking Section 33 of the Evidence Act. In view of Section 244, 245 and 246 of Criminal procedure in a private complaint the accused does not have a right to cross-examine the witness examined by the prosecution before framing of charge. In the interest of Justice and as a matter of convenience he has been given a right to cross examine those witnesses. It is not the right which the accused person having in committal proceedings to cross examine the witnesses examined on behalf of the prosecution, when cases used to be committed to court of session under code of criminal procedure 1898. Since the panch witnesses have also failed to support the case of the food Inspector, who could not be cross examined due to his accidental death it was held by the High Court that the conviction based solely on the uncorroborated evidence of the food Inspector's chief examination is not sustainable.

42(b) Per contra the learned Additional Public Prosecutor Thiru V.R.Balasubramanian would contend that the evidence of a witness who could not be subjected to cross-examination due to his death before he could be cross-examined, is admissible in evidence. In support of this contention the learned Additional

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Public Prosecutor would reply on 1998 Crl. LJ 3494 (Food Inspector, Thodupuzha Cirlce Vs. James N.T and another). The relevant observation in the above Judgment runs as follows:-

> "As already noted P.W.1 the food Inspector died after examination in chief and there was no opportunity to cross examine him. P.W.2 who is the peon in the office of P.W.1 has narrated in detail with regard to the purchase of peas dhal from the shop of the respondents for analysis sampling etc., by P.W.1. P.W.3 the owner of the shop room in which the respondents were conducting the trade has also deposed about the purchase of the articles for analysis, sampling etc. by P.W.1. P.W.4 the successor in office of P.W.1 has deposed in conformity with the evidence of P.W.1 and P.W.2 and the various documents produced in this case from his office are proved and marked through him. It has been held in the above ratio that"
>
> The General proposition that the evidence of a witness who is not subjected to cross-examination cannot be looked into cannot be disputed. But the question in this case to be considered is whether the evidence of P.W.1 who was examined in chief and was not available for cross-examination due to his death in the mean while is admissible or not. The principles laid down in the decisions relied upon by the counsel for the appellant referred to above clearly establish that the evidence of a witness who could not be subjected to cross-examination is admissible in evidence, though the evidentiary value will depend upon the facts and circumstances of the case."

42(c) The same principle has been laid down in AIR 1944 Allahabad 188 (Ahmad Ali Vs. Jotiprasad), wherein it has been observed as follows:-

> "They also produced a witness called wazir Singh who was employed by them and who gave evidence about the number of tress which had been cut down bythe defendants. Unfortunately this witness died before he could be cross-examined and it is urged on behalf of defendants/appellants that his evidence is not admissible. There is certainly no provision in the Evidence Act that the evidence of a witness who has been examined in open court upon oath shall be excluded because it has not been possible for the other party to cross examine him. .....
> I need only quote the following passage in para 1469 in the tenth edition of Taylor's Law of Evidnce "In the event of death or serious illness of a witness between

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his examination in chief and in cross examination... in England both a late Master of the Rolls and a late vice chancellor have in a Civil case held that the evidence previously given by him in admissible though the degree of weight to be attached to it is of course a question of fact"

The important factor to be noted in the case on hand is that the case of the prosecution does not exclusively hinges upon the evidence of P.W.20 (approver) alone, but the prosecution also relied upon the evidence of P.W.1, P.W.5 to P.W.7, P.W.10, P.W.15, P.W.21, P.W.22, P.W.25, P.W.26, P.w.30, P.W.31 against A1 and on the evidence of P.w.1, P.W.4 to P.w.9, P.w.18, P.W.19, P.w.21, P.W.22, P.W.24, P.w.28, P.W.30, P.W.32 and P.W.33 as against A2 and on the evidence P.w.7, P.W.15, P.W.21, P.W.22 and P.W.31 as against A3. Under such circumstances, I am of the considered view that the contention of the learned Senior Counsel that no evidentiary value can be attached to the evidence of P.W.20 (approver) and his evidence is liable to be eschewed on the ground that he could not be subjected to cross-examination holds no water.

42(d) Now the point is whether the prosecution has bring home the guilt of the accused dehorring the evidence of P.W.20 through other material witnesses as indicated above.

42(e) Now let us analyse the evidence as against each and every appellant and see whether the trial court is justified in convicting the accused under the above provisions of law. As against A3/the appellant in C.A.No.1045/99, the prosecution relies on the evidence of P.W.7, P.W.15, P.W.20 (approver), P.W.21, P.W.22 and P.W.31. The charges No.7, 8 and 9 are relating to A3-Ramasamy (Prviously A4). The 7th charge is that as the store keeper in the Mettur Township committee between 8.10.1979 and 31.8.1980 in furtherence of common intention falsified the accounts so as to appear that 15 tonnes of 'Alum' was puchased by Mettur Town ship in order to purify the Drinking Water supplied by the Mettur Township to the public but actually 8 tonnes of Alum alone was supped by A2 under the able assistance of A1. Hence, the charge under Section 477(A) IPC. Eight charge against A3-Ramasay is that he had comitted an offence of cheating under Section 420 IPC r/w 109 IPC. Nineth charge against A3 is by corrupt or illegal means or otherwise abusing his official position to obtain pecuniary advantage to A1 and A2 to the tune of Rs.13,650/- thereby comited an offence punishable under section 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947 r/w 109 IPC.

42(f) P.W.7 would depose that A3 was working as a clerk in Mettur Township. P.W.7 not implicated A3 in the crime. P.W.15 would depose that A3 was working as a Junior Assistant at Mettur

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Township. He would depose that Ex.P.21 to P.24 entries were made by A3. But he would admit in the cross-examion that he cannot say who had affixed the despatch seal and dates on Ex.P.21 to Ex.P.24, which are Tender notices. P.W.20 (approver) would say that A3 Ramasay was working as store keeper. P.W.20 (approver) also has deposed that he had informed about the arrival of 80 bags of Alum t A3 Ramasamy. When P.W.20 came to know about the arrival of 80 bags of alum he went and informed A3. After P.W.20 informed that A3 he(P.W.20) was chided by A1 for having informed about the arrival of 80 bags of Alum to A3. So this fact will itself lead us to draw an inference in favour of A3. P.W.21 would depose in the chief-examination that in the Tender schedule Ex.P.39, (page 49 in Ex.P.20) at S.No.64, A3 had scored out an entry 'Hair belt 5 inches' and had written about the arrival of 15 alums. But in the cross-examination P.W.21 would admit that he has no personal knowledge about the endorsement made by A3 in Ex.P.39. Under such circumstances, we cannot presue that the above said entry is Ex.P.39 was made by A3. Even though a hand writing expert's services were utilized for the purpose of comparing the signature of A1 & A2 with that of a disputed signatures. So there is no evidence on record to show A3 had made a wron wntry in Ex.P.39.

42(g) P.W.22 would depose in the cross-examination that A3 has not working in E2 Section. P.W.31, Sanctioning authority, who gave sanction for prosecution against A3. Under such circumstances, I am of the firm view that the guilt against the accused A3 has not been proved beyond any reasonable doubt. I hold that A3 is not liable to be punished.

42(h) As against A1 and A2 the evidence glares at them are P.W.1, P.W.4 to P.W.10, P.W.15, P.Ws.18 to 22, P.Ws.24 to 26, P.W.28, P.Ws.30 to 33. A1 is the public works supervisor of Mettur Township Committee. A2 is the contractor. Both A1 and A2 along with other accused in cluding the approver (P.w.20) agreed to commit illegal act to cheat the Mettur Township Committee by creating fabricated documents as if 15 tonnes of Alum has been purchased, but only 8 tonnes of Alum has been supplied the remaining 7 tonnes have not been supplied but necessary charges are correction has been made in records and received Rs.13,650/- as illegal income towards the value of 7 tonnes of Alums. The evidence of P.W.1, the complainant against A1 and A2 is to the effect that on 2.8.1980 at about 11.50 am he was both A1 and A2 auarrelling at each other before the Indian Bank, Mettur branch, he pacified them and after A1 left the place A2 had informed about the genesis of the case which made him to prefer the complaint Ex.P.1. In this regard P.W.20's evidence is very important to be noted. P.W.20 a co-employee of A1 and deceased accused Veeraragavan at Mettur Towhship would admit that as requested by A1 Thangevellu he gve Ex.P.29 and Ex.P.30 letters for the suply of

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15 tonnes of Alums. Since alums was not supplied as required under Ex.P.29 and Ex.P.30 he gave another report under Ex.P.31. Thereafter at the end of July 1980 at 12 noon while he was on off duty at home he was informed that A1 required him and he went and met him, who informed him about the arrival of 80 bags of Alum which is equvalent to 8 tonnes, were unloaded and stored in the godown of the water works. It is further revealed from the evidence of P.W.20 that to compensate the shortage of the supply of 7 tonnes Alums he and the co-worker (deceased accused Veeraragavan) have created false records, by making false entries in ex.P.10 and Ex.P.11 regarding the requirment of Alum per day as 250 Kilos to 300 Kilos against the actual requirement of 60 to 70 Kilos per day, as per the direction of A1 and the discharge accused Abdul Rahim. He would depose in categorical terms that the remaining 7 tonnes of Alums was never supplied at all. Ex P33 is the statement of P.W.20 recorded under Section 164 Cr.P.C..P.W.21 also corroborated the evidence of P.W.20 with regard to the approval of tender in favour of A2 under Ex P36 to Ex P38 and also about the correction made in Ex P39 entry regarding the supply of 15 tonnes of Alum. Even though he would say the said correction was made by A3, in the cross examination , he would admit that he has no personal knowledge about the said correction made by A3. There is no expert opinion available against A3 in this regard also to link A3 with the crime committed by A1 and A2.

42(i) The evidence of P.W.24, P.W.25 coupled with the evidence of P.W.23 would go to show that both A1 and A2 went to Madras and puchase only 80 bags (8 tonnes) of Alums from M/s M.M.Kitcha and Company which supplied at the rate of Rs.28/per bag and 80 bags were supplied under Ex P52 delivery order. There is no material produced on the side of A1 and A2 to rebutt the evidence of prosecution to show that the remaining 7 tonnes of Alum was supplied as per Ex P69 bill and the endorsement made there on by A1.

42(j) After taking in to consideration all the materials produced before the trial Court, the learned trial Judge has come to the correct conclusion that the charges levelled against A1 and A2 has been proved beyond any reasonable doubt and accordingly convicted and sentenced them as indicated above, which in my considered view does not require any interference from this Court.

42(k) When the mind set of this Court is revealed before the learned advocates they would submit that due consideration may be shown on A1 and A2 in the ordeal of facing the trial over 25 years before the trial Court as well as before this Court and also the advanced age of 65 years of A2 and 70 years of A1, some leniency may be shown on A1 and A2 while awarding sentence. Due

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consideration is given to the above submissions of the learned counsels for A1 and A2 and I am of the view that while confirming the finding of conviction against A1 and A2 by the trial Court the sentence alone can be modified to that of "till the rising of the Court" under all the charges levelled against A1 and A2 besides confirming the fine imposed on them by the trial Court. Point is answered accordingly.

43. In fine Crl.A.No.1045 of 1999 is allowed and the Judgment of the trial Court in S.C.C.No.206 of1986 on the file of the Sub Judge and I Additional Sessions Judge-cum- Chief Judicial Magistrate,Salem in so far as A3 is concerned, is set aside and A3 is set at liberty. Fine amount paid by A3 is directed to be refunded to A3.Bail bond against A3 stands cancelled.
Crl.A.No.1010 of 1999 preferred by A1 and Cr.A.No.998 of 1999 preferred by A2 against the Judgment in C.C.No.206 of 1986 on the file of the Sub Judge and I Additional Sessions Judge-cum- Chief Judicial Magistrate,Salem are dismissed. But the sentence alone is modified to that of "till the rising of the Court"under all the charges levelled against them considering their age(A1 is 70 years) (A2 is 65 years) and the plight or ordeal of trial in which they have been put into for the past 25 years before the trial Court as well as appellate Court. Fine imposed against A1 and A2 shall sustain. A1 and A2 shall appear before the trial Court on 27.4.2007 at 10.30 a.m., to undergo the sentence.

Registry is directed to inform trial Court by fax and despatch the records within two days.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

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To

1.The Special Judge and
First Additional District Judge-
cum-Chief Judicial Magistrate,
Salem.

2.The Chief Judicial Magistrate,
Salem.

3.The Principal Sessions Jude,
Salem.

4.The Inspector of Police,
(Vigilance and Anti corruption)
Salem.

5.The Public Prosecutor,
High Court, Madras-104.

6.The Section Officer,
Criminal Section, High Court,Madras (to despatch the records within two days).

+1cc to Mr.D.Shivakumran, Advocate Sr 26857
+1cc to Mr.A.N.Thambidurai, Advocate SR 26680
+1cc to Mr.A.K.Kumarasamy, Advocate Sr 26684

BV(CO)
km/23.4.

Crl.A.No.989, 1010 & 1045 of 1999

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